

March 13, 2000

Col. William C. Bernhjelm, Director
Division of Enforcement
Minnesota Department of
Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4047

RE: In the Matter of the Trespass Citation Issued to Randy James Larson;
OAH Docket No. 9-2000-12601-2.

Dear Col. Bernhjelm:

A hearing in this matter was held on February 9, 2000, by telephone conference call. Participating in the hearing were Conservation Officer Bob Mlynar, Conservation Officer Bruce J. Hall, landowner Ken Gangl, landowner Stan Michaelson, Rodney Scott, and Randy James Larson, who was issued Trespass Civil Citation No. 15918 by Officer Mlynar for trespassing on Mr. Gangl's land in August and September, 1999. All were sworn and gave testimony. The primary issue in this case is whether Mr. Larson's entry onto Mr. Gangl's land constitutes a trespass under the facts of this case. Additionally, there are questions as to whether the land was properly posted.

Mr. Gangl is the owner of a parcel of land in Section 8 of Idun Township of Itasca County. Stan Michaelson owns 271 acres, including 31.5 acres purchased in 1989 that is adjacent to Mr. Gangl's land. A barbwire fence is present but that fence does not clearly demarcate the boundary between Mr. Gangl's and Mr. Michaelson's parcels. When Mr. Gangl bought his parcel in 1989, he posted "No Trespassing" signs along the boundaries of the property.

Mr. Michaelson asked Mr. Larson to come up to his property to hunt bears. The bears had been damaging Mr. Michaelson's crops. Mr. Larson agreed and came up to create a "bait station" in August. Mr. Michaelson described his property as running "clear through to the next road."^[1] He did not tell Mr. Larson that another person owned the land to the north.

Larson crossed Mr. Michaelson's hay field and found an all-terrain vehicle trail (ATV trail). A barb wire fence ran along the ATV trail and the trail crossed the fenceline in a wooded area. The fence at this point was down. There was no signage indicating a property line was being crossed. A plywood board was attached to a tree in the vicinity of the type used for posting signage, but no sign was attached.^[2] Larson established the bait station about 300 feet to the north of the fenceline. Larson posted a sign over the bait station with his name and driver's license number on it.^[3] He also filed the report identifying the bait station with the Department of Natural Resources.

When Mr. Michaelson saw bears congregating after the installation of the bait station, he suspected that the bait station might be located on Mr. Gangl's land. He telephoned Mr. Gangl, informed him of the possibility that the bait station was on Mr. Gangl's property and asked permission for it to remain there to eliminate the bear problem that Mr. Michaelson had been experiencing. Mr. Gangl told Mr. Michaelson that there was no problem with the bait station being on his property, but that he wanted to meet Mr. Larson.

On August 29, 1999, Mr. Michaelson telephoned Mr. Larson and asked that he come up to the property. Mr. Michaelson told Larson about the problem with the location of the bait station and informed him that Mr. Gangl had no problem with the bait station on his property, but that Mr. Gangl wanted to meet Mr. Larson. Mr. Larson was not able to meet Mr. Gangl prior to September 1, but believed Gangl had given Michaelson permission to go forward with the hunting. On September 1, 1999, the bear hunting season opened and a hunting party of Larson's shot a bear near the bait station at approximately 6:15 p.m. Mr. Larson did not accompany the hunters on the hunt. Soon after, Officer Mlynar arrived on the scene and suggested to the hunters that failing to find the bear would constitute "wanton waste."^[4] The hunters, who had been searching by lantern light, indicated that they would stop looking for the bear due to darkness and return at 9:00 a.m. the next morning.^[5]

On the morning of September 2, 1999, Officer Mlynar returned and found the hunting party looking for the bear. After finding the bear carcass himself, Officer Mlynar waited approximately thirty minutes and asked the hunters how long they would continue looking.^[6] After they informed him they would continue to look for about another hour, Officer Mlynar told them he had found the bear.^[7]

Mr. Larson met with Mr. Gangl on September 5, 1999. The meeting was amicable and at no time did Mr. Gangl indicate that he was concerned or upset at the placement of a bait station on his property. At about the same time, Officer Hall became involved and heard from Mr. Gangl that the initial placement of the bait station had been done without prior permission to enter onto the Gangl property. Officer Hall began a trespassing investigation based on that information, including visits to the site, where he took photographs. Mr. Gangl did not file any formal complaint or ask that an investigation be conducted. On October 8, 1999, Officer Mlynar issued citation No. 15918 to Mr. Larson alleging that "Bear guide placed bait on legally posted land without permission from the landowner."^[8]

Minn. Stat. § 97B.001, subd. 3, prohibits remaining on land for recreational purposes after the landowner gives oral notice that the person is trespassing. At no time was Mr. Larson told not to come onto Mr. Gangl's property. Subdivision 4(a) states in pertinent part:

a person may not enter, for outdoor recreation purposes, any land that is posted under this subdivision without first obtaining permission of the owner, occupant, or lessee.^[9]

Officer Hall maintains that the property, once posted, establishes the absolute requirement that permission must be obtained from the landowner. Mr. Larson maintains that for land to be posted to trigger the permission requirement, the landowner must annually maintain the "No Trespassing" signs.

The standards for posting are set out in Minn. Stat. § 97A.001, subd. 4(b) which states:

- b) The owner, occupant, or lessee of private land, or an authorized manager of public land may prohibit outdoor recreation on the land by posting signs **once each year** that:
 - (1) state "no trespassing" or similar terms;
 - (2) display letters at least two inches high;
 - (3) either: (i) are signed by the owner, occupant, lessee, or authorized manager; or
(ii) include the legible name and telephone number of the owner, occupant, lessee, or authorized manager; and
 - (4) either: (i) are at intervals of 1,000 feet or less along the boundary of the area, or in a wooded area where boundary lines are not clear, at intervals of 500 feet or less; or
(ii) mark the primary corners of each parcel of land and access roads and trails at the point of entrance to each parcel of land except that corners only accessible through agricultural land need not be posted.^[10]

The evidence in the record on this matter demonstrates that the "No Trespassing" signs were posted in 1989, when Mr. Gangl bought his property. There is no evidence that the signs were maintained at any time since 1989. Testimony from all three of the persons who are most familiar with the property (Mr. Gangl, Mr. Michaelson, and Officer Hall) indicated that the posting of the property had been done years ago. There is no evidence to support a finding that Mr. Gangl had posted his land with a "No Trespassing" sign within the year, as required by Minn. Stat. § 97A.001, subd. 4(b). There was no sign present when Mr. Larson entered onto Mr. Gangl's land. There is also no evidence that Mr. Larson improperly removed an existing sign. Since the land was not properly posted and had not been so posted within a year, there is no violation of the trespass statute. I therefore recommend that the citation be DISMISSED.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order in this matter until at least five days after receipt of this letter. Mr. Larson may, during that five-day period, comment to the Commissioner on this recommendation and the Commissioner must consider such comments.

Col. William C. Bernhjelm, Director
March 10, 2000

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I am closing our file in this matter and returning the record to you.

Sincerely,

PHYLLIS A. REHA
Administrative Law Judge
Telephone: 612/341-7602

Enclosure

cc: Randy J. Larson
Conservation Officer Bob Mlynar
Capt. Mike Hamm

^[1] Larson Testimony.

^[2] Photographs 1 and 2.

^[3] Photograph 3.

^[4] Minn. Stat. § 97A.031 states, "Unless expressly allowed, a person may not wantonly waste or destroy a usable part of a protected wild animal."

^[5] Exhibit D, at 2.

^[6] Exhibit D, at 2.

^[7] *Id.*

^[8] Exhibit A.

^[9] Minn. Stat. § 97B.001, subd. 4(a).

^[10] Minn. Stat. § 97B.001, subd. 4(b)(emphasis added).